



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0397]

Commercial Driver's License: Oregon Department of Transportation; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant the Oregon Department of Transportation (ODOT) a limited exemption from the commercial learner's permit (CLP) requirement in 49 CFR 383.25(c). All State Driver's Licensing Agencies (SDLAs) are allowed to use this exemption at their discretion. The exemption will allow ODOT and participating SDLAs to extend to one year the 180-day timeline for the CLP from the date of issuance, without requiring the CLP holder to retake the general and endorsement knowledge tests. Under the exemption, an applicant wishing to have a new CLP after the previous one expires will be required to take all applicable tests before a new CLP is issued.

DATES: This exemption is effective April 5, 2016, and expires April 5, 2018.

ADDRESSES: Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit,

including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mrs. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325, E-mail: MCPSD@dot.gov, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. If you have questions on viewing material in the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2015-0397” in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must

publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

ODOT requested an exemption from the Agency's CLP requirement in 49 CFR 383.25(c). The regulation provides that the CLP be valid for no more than 180 days from the date of issuance. The State may renew the CLP for an additional 180 days without requiring the CLP holder to retake the general and endorsement knowledge tests. ODOT proposed that it be allowed to extend the 180-day timeline to one year for CLPs issued to its drivers.

ODOT provided multiple reasons for regulatory relief from the CLP rule. First, ODOT believes that the 180-day time line required to renew the CLP adds nothing to the

effectiveness of the rule itself, the purpose of which is to “enhance safety by ensuring that only qualified drivers are allowed to operate commercial vehicles on our nation’s highways” (76 FR 26854, May 9, 2011). ODOT asserts that neither FMCSA staff nor the States were able to identify any highway safety enhancement arising from this requirement. ODOT states that it is unaware of any data suggesting that persons who have not renewed their CLP or obtained their CDL within six months pose less risk on the Nation’s highways.

Second, ODOT agrees that requiring CLP holders to retake the knowledge test after not obtaining a CDL within one year improves highway safety, but disagrees that the requirement for renewal at six months is needed. According to ODOT, if the exemption is granted, ODOT’s CLP would have a validity period of one year with no renewal allowed. All applicable knowledge tests would be required before a new CLP could be issued, which would accomplish the objective of not allowing a person to have a CLP longer than one year without passing knowledge tests.

The third reason for the request is that Oregon’s “Department of Motor Vehicle (DMV) field offices have a very large volume of work to accomplish and, at best, limited resources with which to accomplish it. Adding the bureaucratic requirement for a CLP holder to visit a DMV office and pay a fee in order to get a second six months of CLP validity will add unnecessary workload to offices already stretched to the limit. ODOT is confident there would be no negative impact on safety if the exemption is granted.”

According to ODOT, “If this exemption is not granted, Oregon drivers with CLPs who have not passed the CDL skills test within six months of CLP issuance would have to go to a DMV office and pay for a renewal of the CLP. This would cause undue

hardship to the drivers, from the perspectives of both their time and their pocketbooks. It would also cause undue hardship to our agency, where scarce resources would be used to process bureaucratic transactions that add nothing to highway safety.”

In addition, because the issues concerning ODOT’s request could be applicable in each State, FMCSA requested public comment on whether the exemption, if granted, should apply to all SDLAs.

VI. Public Comments

On November 27, 2015, FMCSA published notice of this application and requested public comment (80 FR 74199). The Agency received 10 comments representing various interests in response to the proposed exemption.

Six comments received in support of the exemption were from the Alabama Law Enforcement Agency (ALEA); Colorado Department of Revenue CDL Unit (Colorado); New York Department of Motor Vehicles (New York DMV); Oregon Trucking Associations, Inc. (OTA); and two individuals.

The ALEA commented that “this requirement is an added financial burden to the CLP holder by having to pay additional fees for renewal and if applicable, any re-testing fees. Therefore, ALEA is in complete agreement with the Oregon Department of Transportation in their petition to allow the CLP to be valid for one year.”

Colorado commented “Regarding FMCSA’s request that should this be applicable to all states. Colorado is concerned that 77% of the SDLA’s have already made the programming changes to issue only a 180 day CLP. Making a change at this point could be very confusing and possibly expensive for SDLA’s and the CDL industry. Colorado would suggest that FMCSA leave the rule as is. However, Colorado

would also suggest that FMCSA work with ODOT one on one regarding this issue to determine if an exemption should be granted to ODOT. If FMCSA believes an exemption should be granted to ODOT, Colorado would support FMCSA granting Oregon's exemption request."

The New York DMV commented that "New York supports granting Oregon's request for an exemption from 49 CFR 383.25(c) which requires that a CLP must be valid for no more than 180 days. The exemption should apply to all SDLAs, allowing states to set their own CLP expiration date, provided the CLP's validity does not exceed one year."

The OTA commented "FMCSA has asked if the exemption requested by ODOT should be extended to other states? Our response is, absolutely and we believe FMCSA should go one step further and change the underlying regulation to allow issuance of a CLP for 1-year."

Mr. Vardis Gaus wrote "I believe this extension to be valid."

Mr. Daniel Tucker commented "As a CDL driver, instructor and state-certified third-party evaluator I believe this proposal/request makes all the sense in the world. Allowing up-to a year practice and development for an entry level driver candidate or re-entering driver allows them to take as much time necessary to build (or rebuild) skills."

Four comments opposing the exemption were from the Commercial Vehicle Training Association (CVTA) and three individuals.

The CVTA summarized its opposition to the exemption by stating "We urge FMCSA to deny ODOT's request for an exemption from the 180-day CLP renewal requirement. Granting such an exemption carries serious safety concerns and sends the

wrong message regarding FMCSA's willingness to accommodate underfunded CDL programs across the Country. Granting this exemption would signal to states that FMCSA will not only tolerate state practices of underfunding CDL programs, but will accommodate them. Moreover, granting this exemption would undercut Congress' recent efforts to put greater pressure on FMCSA and states to ensure that state CDL programs are more adequately funded and efficiently administered."

Josh Anonymous wrote "Don't do it. Six months is plenty."

Mr. Roland Doe wrote "Send a message to such an unfriendly bureaucracy: NO dice on the waiver request. If other states can meet the Federal requirement – and the majority of them are much easier to do business with – even California – so can ODOT."

Mr. Gary Scott commented that "A learner's permit should only be valid for 6 months. If a person cannot achieve a level of proficiency within that time period to acquire a permanent CDL then maybe they should consider another line of work."

All comments are available for review in the docket for this notice.

V. FMCSA Response and Decision

The FMCSA has evaluated ODOT's application on its merits following full consideration of the comments submitted to the docket, and has decided to grant the exemption from 49 CFR 383.25(c) for a period of 2 years. The exemption covers ODOT and all SDLAs. Extending the exemption to cover all SDLAs, at their discretion, will preclude the need for other SDLAs choosing to use the exemption to file identical exemption requests. FMCSA believes that safety would not be diminished by allowing a validity period of one year for the CLP. The maximum time allowed between taking

the knowledge tests and obtaining the CDL is 12 months under the current rule and under the exemption. The exemption avoids the necessity of obtaining a renewal of the CLP after 6 months if the State chooses to allow that. FMCSA determined that the exemption would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption (49 CFR 381.305(a)).

Issued on: March 25, 2016

T.F. Scott Darling, III
Acting Administrator

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